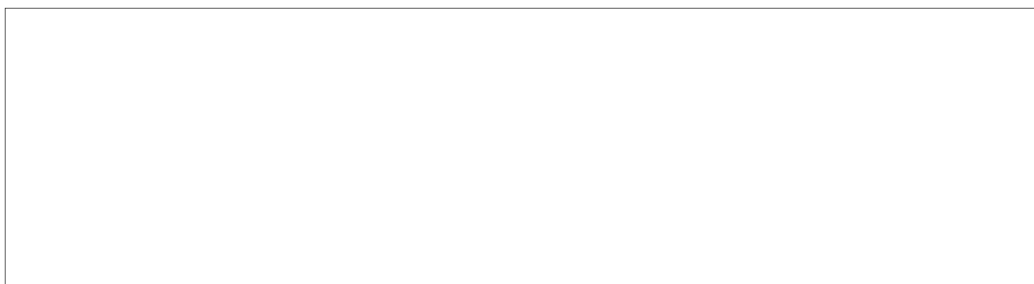


The Society of Professional Journalists, Sigma Delta Chi

Statement of



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on behalf of the
SOCIETY OF PROFESSIONAL JOURNALISTS, SIGMA DELTA CHI

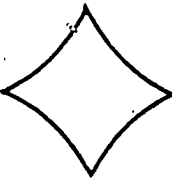
before the

Senate Select Committee on Intelligence

Concerning

S. 1324, "The Intelligence Information Act of 1983"

June 28, 1983



The Society of Professional Journalists, Sigma Delta Chi

Thank you Mr. Chairman and members of the Committee for providing us this opportunity to comment on S. 1324, the Intelligence Information Act of 1983.

My name is Steven Dornfeld and I am here today as National President of The Society of Professional Journalists, Sigma Delta Chi. Accompanying me is Bruce W. Sanford of Baker & Hostetler, the Society's First Amendment counsel. I have been a working reporter for the past 14 years and a national officer of the Society since 1973. Formed in 1909, the Society is the largest organization of journalists in the United States, with more than 28,000 members in all branches of the news media, print and broadcast.

We appear before this Committee today, Mr. Chairman, as we have in the past, because of our interest in the government's information policies. That interest stems only secondarily from professional self-interest. As the Chairman knows, journalists in this city do not need official governmental sources of information when there are always plenty of people ready and willing to leak unofficial information. (Why, sometimes, those folks even dispense classified information in pursuit of political advantage.) Thus, the Society of Professional Journalists comes here today not so much on its members' behalf, as on the public's behalf. It is, after all, the public that truly benefits from access to the sheer authenticity of official government records as opposed to people's interpretations of those records.

At the outset, we recognize that the Central Intelligence Agency ("CIA") has at last abandoned its request of prior years to be totally exempt from the Freedom of Information Act ("FOIA"). As Senator Moynihan noted last year, the fact that our secret intelligence service is subject to something called the FOIA may sound paradoxical, but actually it expresses a great truth -- and that makes our nation and our intelligence service different and stronger than any other on earth.

Last week's public testimony by the CIA suggests that the Agency seeks this legislation in order to alleviate its administrative work and enhance its internal security. To the extent that this proposed bill merely alleviates administrative burden without decreasing the kind of information presently available under the FOIA, the Society does not oppose the bill. To the extent that the CIA harbors deeper aspirations for this bill we oppose it since the case for a broader exemption from the Act has simply not been made.

Mr. Chairman, our position here today should explode the myth that the press always opposes the CIA's legislative requests. Obviously, while trying to approach this bill reasonably, the Society still has reservations about its effects. In fact, we have so many unanswered questions that we must indulge this morning in a legislative equivalent of the game "Twenty Questions." And all our questions come in the context of the Reagan Administration's overall information policy, a policy which has been constantly

whittling away the amount of information the American people receive about their government. Any cynicism journalists have about the true intent of S. 1324 derives from a fear that this bill is just another deep pothole on the same one-way street that has already given us the President's March 11 directive on national security information, last year's executive order on classification, the Justice Department's policy on fee waivers and a retrogressive package of Freedom of Information Act amendments. We also believe, Mr. Chairman, that the Senate is stuck in a rut concerning the FOIA. There has been a steady flow of FOIA amendments over the last three years. But all the ones given the green light by the Senate travel in the same direction, potentially causing a huge roadblock tying up the traffic in information about the government going to the American public. The Senate has put in motion bills by the CIA, the FBI, and the Department of Justice to expand their exemptions. Yet bills to open up the government, like Senator Durenberger's effort to reverse President Reagan's order on classification, have met nothing but legislative gridlock.

One effect of this proposed bill is plain: it will increase the oversight chores of this Select Committee. Thus, if the Committee does not detect future agency overreaching in defining exempt files, the blame for not preventing agency abuses will be laid directly at its door. Even today, the oversight role requires the Committee obtaining answers to a bushel basket of questions about S.1324:

-- Would this bill deny information to the public that is now available under the FOIA? If the answer is "yes," the bill is more than the CIA says it is. What information does the

Agency believe this bill entitles them to withhold? Has this Committee presented the Agency with a list of stories based on information obtained under the FOIA and asked if the information would still be released under S. 1324? Has this Committee analyzed the fate of the law suits pending against the Agency under the retroactive feature of this bill? How would the information sought in those suits be affected?

-- Will requests to the CIA from the press receive the expedited treatment promised under the FOIA?

-- How will the CIA shift its personnel to meet its pledge to reduce its reply time to FOIA requests if S. 1324 is enacted? Does the Agency have a specific plan to reduce this backlog that belies the distressingly noncommittal answer given last Tuesday? While the Agency claims this bill will significantly reduce its workload, why is there no oversight provision to ensure this is done? Has the Committee considered a sanction if the CIA fails to reduce its response time?

-- Are there sufficient checks for the public in this bill if the Director of the Central Intelligence Agency ("DCI") has total and final authority to decide what is and is not an "operational file"? Under the bill's extraordinarily broad definition of "operational file," what is to prevent more and more information from being hidden, including information now releasable under the FOIA? Why is there no mention of Congressional oversight and how it will work in S. 1324?

-- How can the "spirit" of the FOIA -- that the American people are entitled to information about their government -- be fulfilled if this bill does not contain any provision for judicial review of a decision by the DCI? Agency officials said in their testimony that judicial review would, in their view, "stand the bill on its head." But doesn't lack of review increase the likelihood of abuses by the Agency?

-- How will a file receive the designation "operational"? What criteria will be used? Is there any review procedure so that information in operational files can be reclassified as circumstances permit? None of this has been explored publicly.

-- Why does this bill contain no provision allowing public scrutiny of files regarding known abuses by the CIA? The only response Mr. McMahon gave last Tuesday was a well-crafted statement that the report of an investigation by the CIA's Inspector General would be placed in non-classified files. Such a report can be a poor excuse for an independent investigation of abuse. And why is there no provision for Congressional oversight in such an instance?

-- Why do the files of a covert operation that is acknowledged, making it an overt operation, remain "operational" under S. 1324? Under the Agency's explanation of last Tuesday, even acknowledgement of a covert operation, like Nicaragua, by a President might not make the files releasable under the FOIA. Shouldn't some CIA information on an issue placed in the public domain by a public official be releasable?

-- Has this Committee received concrete examples from the Agency that the FOIA has ever led to the exposure of a source's identity? Has the agency shown that it has lost agents because of fears about the FOIA? Is it possible that these sorts of public statements create self-fulfilling prophecies? In other words, once the Agency says the FOIA makes possible the disclosure of sources and methods, don't agents start thinking that way?

-- Can a time limit be placed in S. 1324 so that the Agency must review files after they are closed a certain number of years and reclassify information which can be safely released?

In the final analysis, Mr. Chairman, we well realize the invaluable service the CIA performs for the citizens of the United States, and its need to keep some information secret. And we also believe that the 200-year-old road this democracy has so successfully followed is paved with inviolate ideals, and paramount among them is that all institutions of government are answerable to the American people. That ideal crumbles when the need for secrecy for secrecy's sake erodes the responsiveness and accountability of the CIA or any other part of government. We look to this Committee to insure that does not happen.